

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MOISES FERNANDEZ, ET AL.,

Plaintiffs

v.

CIVIL ACTION NO.:
09-12149-EFH

P.O. KYLE R. WILCOX, ET AL.,

Defendants.

ORDER

May 25, 2010

HARRINGTON, S.D.J.

After a careful examination of the complaint, the Court allows the Motion to Dismiss by defendant, Scott McNamara (Docket No. 21).

All claims under Count I against defendant McNamara are dismissed because the complaint fails to allege sufficient facts establishing that McNamara was aware that the arrests of the plaintiffs were unlawful or that excessive force was being used. The complaint further fails to allege facts indicating that there was an opportunity for McNamara to intervene to prevent the use of excessive force or that McNamara otherwise acquiesced to the use of excessive force.

This Order does not consider the state claims alleged by the plaintiffs. At the appropriate time, those claims will be severed and remanded to state court for trial.

The Motion to Dismiss for failure to state a claim by defendant, Scott McNamara (Docket No. 21), is ALLOWED.

SO ORDERED.

/s/ Edward F. Harrington
EDWARD F. HARRINGTON
United States Senior District Judge